

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**GREATER ST. LOUIS CONSTRUCTION, )  
LABORERS WELFARE FUND, ET. AL., )**

**Plaintiffs, )**

**vs. )**

**Case No.4:10CV1999SNLJ**

**HEARTLAND CONSTRUCTION & )  
EXCAVATING, INC., )**

**Defendant. )**

**MEMORANDUM AND ORDER**

This matter is before the Court on the plaintiffs' motion for summary judgment [12], filed April 20, 2011. Since the filing of the instant motion, defendant has requested and received six (6) extensions of time to file a response to the instant motion, with the last extension of time expiring as of September 12, 2011. *See*, Docket Text Orders [16, 18, 20, 22, 24, and 26]. As of today's date, defendant has failed to file a response to the instant motion.

Plaintiffs filed this ERISA action seeking to recover delinquent reports, delinquent contributions, liquidated damages, and interest allegedly owed by the defendant to the plaintiff employee benefit funds pursuant to 29 U.S.C. §§185 and 1132. Plaintiffs further seek accounting fees, attorneys' fees and costs incurred in litigating this matter.

After careful review of the plaintiffs' complaint, the instant motion, memorandum of law in support, statement of material facts, and relevant caselaw, the Court will grant the instant motion.

A financial examination of the defendant's financial records pursuant to the relevant collective bargaining agreements for the period January 17, 2008 through June 30, 2010 revealed

that defendant had failed to report and pay fringe benefit contributions on hours worked by employees. Based on the accountants' report, plaintiffs determined that defendant owes \$96,593.76 in delinquent contributions, \$19,564.65 in liquidated damages, and \$5821.41 in interest.

Additionally, plaintiffs have determined that defendant failed to timely submit its contributions for various months between December 2008 and April 2010. Liquidated damages of 20% in the amount of \$2690.34, and interest in the amount of \$100.17 are owed on these untimely contributions. Finally, defendant has failed to submit any reports or make any contributions for the period of May 2010 to date.

Pursuant to the relevant collective bargaining agreement and ERISA, 29 U.S.C. §1132(g)(2), plaintiffs are owed a total of \$96,593.76 in delinquent contributions, \$22,254.99 in liquidated damages, and \$5921.58 in interest.

Furthermore, pursuant to the relevant collective bargaining agreement and ERISA, 29 U.S.C. §1132(g)(2), defendant is obligated to pay attorneys' fees and costs in this cause of action. Plaintiffs have incurred \$945.00 in accounting fees, \$1459.00 in attorneys' fees, and \$548.25 in costs. The Court has reviewed the affidavit(s) submitted in support of the requested fees and costs and finds same to be reasonable and necessary to the litigation of this lawsuit.

The total amount owed by defendant to plaintiffs for delinquent contributions, liquidated damages, and interest is \$124,770.33. The total amount for attorneys' fees and costs owed by the defendant to the plaintiffs is \$2952.25. Thus, the total amount owed by the defendant to the plaintiffs during the relevant time-period is \$127,722.58.

Accordingly,

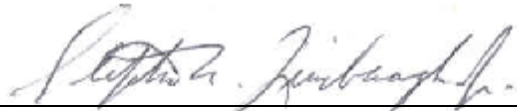
**IT IS HEREBY ORDERED** that the plaintiffs' motion for summary judgment [12] be and is **GRANTED**. Judgment is entered for the plaintiffs and against the defendant on the merits of the plaintiffs' complaint.

**IT IS FURTHER ORDERED** that judgment be and is entered for the plaintiffs and against the defendant in the total amount of \$124,770.33 for delinquent contributions, liquidated damages, and interest from January 17, 2008 through June 30, 2010.

**IT IS FURTHER ORDERED** that plaintiffs are awarded attorneys' fees and costs in the total amount of \$2952.25.

**IT IS FINALLY ORDERED** that defendant shall submit to the plaintiffs all reports and contributions owed for the period of May 2010 through October 13, 2011.

Dated this 13th day of October, 2011.

A handwritten signature in dark ink, appearing to read "Stephen A. Finkbeiner", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE